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EMERGING OPPORTUNITIES AND NEW HORIZONS IN THE CA PROFESSION

— by Vinod Jain*

The profession of chartered accountants has achieved distinguished position and respect in the society. The excellence, independence and integrity of Chartered Accountants has immensely contributed to the professional development over last more than 50 years. The council of the institute has taken several initiatives for international recognition for the Indian profession. A comprehensive upgradation of education, training and examination w.e.f. 1st October, 2001 has been undertaken. ICAI has notified 29 Accounting Standards and 30 Audit & Assurance Standards as mandatory and have achieved comparability to international standards. ICAI has taken up with US, Europe, Canada, Australia, China and other developed countries for mutual recognition of Indian qualification. MOUs have been signed to initiate the process. On WTO, IFAC and CAPA forums multilateral negotiation processes is on. The Institute of CA of England and Wales and Canadian Institute CGA have already announced partial exemptions for Indian CAs.

The post qualification courses including CAAT, ISA, Insurance & Risk Management, International Trade & WTO has been introduced. The proposal to bring in a comprehensive globally competitive post qualification course on 'Corporate Finance' along with these courses would provide special technical skill to Chartered Accountant.

Serious efforts are being made for comprehensive upgradation of campus interview and employment cell to provide domestic and international employment opportunities for fresh and experienced chartered accountants.

Strategic moves have been initiated for professional development in the area of Insurance Sector, Sales Tax/VAT Audit, cooperative sector audit, accounting & audit of local bodies like municipal corporations, panchayats, market committees, housing boards and government departments like railways.

The strengthening of Indian chartered accountants firms has been initiated by promoting national & international networking of firms, merger, demerger and consolidation of small firms to create large competitive firms, promoting the concept of multiple partnership for chartered accountants and moving towards corporatisation of consultancy practice.

The Institute and Reserve Bank of India has recently constituted a committee to consider centralized empanelment and allotment of inspection, revenue and concurrent bank audit with a priority to provide allotments to those who are not been allotted statutory bank branch audit. The upgradation of fees scales to respectable and reasonable level for internal bank audits, PSUs audits and tax audits is an important agenda before the profession and the council can consider prescription of minimum mandatory level in this regard.

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*Mr. Vinod Jain, FCA, FCS, FICWA, LL.B Member Central Council, ICAI and Convenor, National Economic Forum (NEF).

LATEST IN FINANCE

1.0 REVISED MEMORANDUM ON PROJECT EXPORTS

With a view to simplifying and rationalising procedures, the Memorandum of Instructions on Project and Service Exports (PEM) has been revised. The Highlights of major changes incorporated in the revised Memorandum are as follows:

S. No.	Subject Matter	Changes
1.	Limits for Clearance of Proposals	Monetary limits for clearance of project export contracts as well as service exports by the approving authority have been denominated in USD. Uniform monetary limit of USD 100 million has been prescribed for authorised dealers and Exim Bank. Project export contracts exceeding USD 100 million will need to be cleared by the Working Group.
2.	Buyer's Credit Scheme of Exim Bank	Authorisation granted to Exim Bank to extend Buyer's credit under its Buyer's Credit Scheme has been revised from Rs.50 crore to USD 20 million.
3.	Periods of Deferred Credit	Period for which deferred credit may be offered by the exporter was linked to the value and type of the contract. The period of deferred credit can now be determined by the exporter and his banker in mutual consultation on merits of each case and on the basis of their commercial judgement. However, consumer durables and miscellaneous engineering goods should ordinarily continue to be exported on "cash" terms.
4.	Conditions necessary for clearance of proposals by ADs/Exim Bank.	Authorised Dealers (ADs) / Exim Bank may now relax these conditions based on their commercial judgement.

In addition to the above, detailed guidelines have been issued in respect of Export of Consumables; Liaison Office including multiple liaison office; Initial Remittance; Third Country Purchases; Export of Equipment on Re-import Basis; Intimation Regarding Approval of the Contract; Progress Report on Execution of Contract; Inter-Project Transfer of Funds; Foreign Currency Account - Opening of; Foreign Currency Account in India; Details of Site / Liaison Office, Payment of Agency Commission on Overseas Borrowings.

(Source: A.P.(DIR Series) Circular No.32 dated October 28, 2003)

2.0 INTEREST ON DEPOSITS UNDER NRE ACCOUNTS

Reserve Bank of India directs that, until further notice, the interest rates on fresh repatriable Non Resident (External) Rupee Account (NRE) deposits for one to three years contracted effective close of business in India on October 18, 2003 should not exceed 25 basis points (as against 250 basis points announced on July 17, 2003 and 100 basis points on September 15, 2003) above the LIBOR/SWAP rates for US dollar of corresponding maturity.

(Source: DBOD. No. Dir. BC. 35/13.01.09/2003-04 dated October 18, 2003)

3.0 INTEREST RATES ON ADVANCES

Banks are now free to determine rates of interest on following advances without reference to PLR and regardless of the size of loan. Banks should, however, have transparent and objective policy approved by their Boards in this regard:

- for purchase of consumer durables;
- to individuals against shares and debentures/bonds and
- other non-priority sector personal loans.

Banks were given freedom to determine the rates of interest in respect of above types of loans and advances without reference to PLR. However, as it was not the intention to allow any concessionality in case of such loans banks were advised not to charge rates below PLR, regardless of size of the loans.

(Source: DBOD. Dir. BC. 39/13.03.00/2003-04 dated October 21, 2003)

4.0 GUIDELINES FOR BANK FINANCE FOR PSU DISINVESTMENTS

Banks are advised that only those SPVs which comply with the following conditions, would not be treated as investment companies and therefore would not be considered as NBFCs for the limited purpose of being eligible for bank finance for PSU disinvestments of Government of India, subject to compliance with the other guidelines issued vide RBI Circulars Nos. DBOD. BP. BC. 17 and 83/ 21.04.137/ 2002-2003 dated 16 August 2002 and 21 March 2003 respectively:

- They function as holding companies, special purpose vehicles (SPV), etc. with not less than 90 per cent of their total assets as investment in shares held for the purpose of holding ownership stake;
- They do not trade in these shares except for block sale;
- They do not undertake any other financial activities; and
- They do not hold/ accept public deposits,

(Source: DBOD. BP. BC. 34 / 21.04.137/ 2003- 2004 dated 15 October, 2003)

5.0 HEDGING MADE COMPULSORY FOR FOREIGN CURRENCY LOANS OVER US \$10 MILLION

In its mid-term review of the Credit Policy, the RBI has made hedging mandatory for all foreign currency loans. Thus, corporates are required to hedge foreign currency loans above US \$ 10 million.

However, banks are allowed not to insist on a hedge, in cases where forex loans are extended to finance exports, and the borrower has uncovered receivables to cover the loan amount. Hedging is also not insisted upon, in cases where forex loans are extended for meeting forex expenditure.

GOVT. TO REDRAFT COMPANIES BILL, 2003

The Cabinet recently asked the Department of Company Affairs to redraft the Companies (Amendment) Bill, 2003, which has been mired in various controversy since the Rajya Sabha passed it on May 7, 2003.

Some of the Controversial Issues of the Bill are:

- Majority independent directors on the board.
- Reservation for women directors.
- Multi-tiered subsidiaries to be abolished, company to have only one investment subsidiary.
- Approval of all shareholders for transfer of shares.

LATEST IN FINANCE

6.0 GUIDELINES FOR PRIVATE PLACEMENT OF DEBT SECURITIES

1. Coverage

These guidelines apply to the FIs' investments, both in the primary market (public issue as also private placement) as well as the secondary market, in debt instruments issued by companies, banks, FIs, State & Central Government sponsored institutions, SPVs, etc., but do not apply to government securities and securities which are in the nature of advance under the extant prudential norms of Reserve Bank of India.

2. Regulatory requirements

- 2.1 The FIs must not invest in unrated debt securities but only in rated ones, which carry a minimum investment grade rating from a credit rating agency registered with SEBI.
- 2.2 The investment grade rating should have been awarded by an external rating agency, operating in India, as identified by the IBA/ FIMMDA. The list of such agencies would also be reviewed by IBA / FIMMDA at least once a year.
- 2.3 The FIs should not invest in debt securities of original maturity of less than one-year other than Commercial Paper and Certificates of Deposits, which are covered under the RBI guidelines.
- 2.4 The FIs should undertake usual due diligence in respect of investments in debt securities.
- 2.5 The FIs should ensure that all fresh investments in debt securities are made only in listed debt securities of companies, which comply with the requirements of the SEBI circular No. SEBI/MRD/SE/AT/36/2003/30/9 dated September 30, 2003.
- 2.6 The unlisted debt securities in which the FIs may invest up to the limits as specified below, should be rated and disclosure requirements as prescribed by the SEBI for listed companies should be followed by the issuer company.

3. Internal assessments

Since the debt securities are very often a credit substitute, the FIs would be well advised to:

- (i) subject all their investment proposals relating to debt securities to the same standards of credit appraisal as for their credit proposals, irrespective of the fact that the proposed investments may be in rated securities;
- (ii) make their own internal credit analysis and assign internal rating even in respect of externally rated issues and not to rely solely on the ratings of external rating agencies; and
- (iii) strengthen their internal rating systems which should also include building up of a system of regular (quarterly or half-yearly) tracking of the financial position of the issuer with a view to ensuring continuous monitoring of the rating migration of the issuers / issues.

4. Fixing of prudential limits

- 4.1 The Board of Directors of the FIs should fix a prudential limit for their total investment in debt securities (other than

government securities and those in the nature of advance) and sub-limits for the following categories of debt securities:

- a) unlisted securities; and
- b) Mortgage Backed Securities (MBS) and securitisation papers issued by the SPVs for infrastructure projects.

The total investment in (a) and (b) above should not exceed 20 per cent of the FIs' total investment in debt securities (other than government securities and those in the nature of advance) as on March 31 (June 30 in case of NHB), of the previous year, with a sub-ceiling of 10 per cent for investments covered under (a) above.

- 4.2 The FIs which have exposure to investments in debt securities in excess of the prudential limit prescribed above as on March 31, 2003 (June 30, 2003 in case of NHB) should not make any fresh investment in such securities till they ensure compliance with the above prudential limit.

- 4.3 As a matter of prudence, the FIs should stipulate, with the approval of the Board, minimum ratings / quality standards for acquiring exposure in debt securities (other than government securities and those in the nature of advance) and industry-wise, maturity-wise, duration-wise, issuer-wise, etc., exposure limits to address the concentration risk and the risk of illiquidity.

(Source: DBS.FID.No. C-8/01.02.00/2003-04 dated November 4, 2003)

7.0 COMPANIES TO PUT PUBLIC DEPOSIT RATES AT PAR WITH NBFC DEPOSITS

Companies will now have to align interest paid by them on fixed deposits taken from the public with the maximum rates prescribed by the RBI for deposit accepted by non-banking financial companies. This brings all interest-setting functions at par with the RBI and makes it difficult for companies with shaky credit ratings to raise funds through deposits.

This rule will also apply to nidhi or mutual benefit societies. This would mean that companies would have to readjust the interest offered on fresh deposits with every change announced by the RBI for deposits accepted by the NBFCs.

8.0 INTEREST RATE ON RUPEE EXPORT CREDIT

Category	With effect from Nov. 01, 2003 (up to April 30, 2004)
Pre-shipment credit	
(i) Up to 180 days	Not exceeding PLR minus 2.5 percentage points.
(ii) Beyond 180 days and up to 270 days	Free
Post-shipment credit	
(a) On demand bills for transit period (as specified by FEDAI)	Not exceeding PLR minus 2.5 percentage points.
(b) Usance bills	
(i) Up to 90 days	Not exceeding PLR minus 2.5 percentage points
(ii) Beyond 90 days and up to 6 months from the date of shipment.	Free

Note : Since these are ceiling rates, banks would be free to charge any rate below the ceiling rates.

(Source: MPD. 240 /07.01.279/2003-04 dated October 31, 2003)

CAPITAL MARKET

1.0 SEC, US MODIFIES DEFINITION OF "INDEPENDENT DIRECTORS"

The Securities and Exchange Commission (SEC), USA has approved long-awaited rules to improve the independence of Corporate Boards.

The rules require that listed companies have a majority of independent directors and impose tighter restrictions on who qualifies as "Independent."

Under the approved rules, a director who is declared "Independent" can't be employed at the company or have worked there within a prior three-year period; nor can any of the director's family members. There are also restrictions on how much money directors can receive from the company other than payment for board service.

2.0 SAT - ALL INSIDER TRADING CANNOT BE PUNISHED

In a path-breaking verdict, the Securities Appellate Tribunal (SAT) has said that a person indulging in insider trading cannot be punished unless proven that he had unfair advantage over other shareholders.

Delivering his last judgement as Presiding Officer of SAT, Mr. S. Achuthan, ruled that, *"If it is established that the person who has indulged in insider trading has no intention of gaining any unfair advantage, the charge of insider trading warranting penalty cannot be sustained against him"*.

3.0 SECURITIES CONTRACTS RULES AMENDED TO WIDEN FUTURES MARKET IN COMMODITIES

The finance ministry has amended two main clauses of the Securities Contracts (Regulation) Rules, 1957 of the Securities Contracts (Regulation) Act 1956, which would substantially widen participation, in commodity futures market.

The amendments now permit stock brokers as also banks and other entities (that were hitherto restricted by their respective statutes), to trade in commodity futures.

Through a notification issued recently in August 2003, the ministry has amended rule 8 (i)(f) of the Securities Contracts (Regulation) Rules, 1957 that permits stock brokers to trade in commodity derivatives also.

However, stock brokers will be permitted to trade in commodity derivatives only through a separate subsidiary that meets all the requisite norms set out by the Forward Markets Commission (FMC), the commodity futures market regulator.

4.0 COMPANIES HALT BOND ISSUES OVER COMPULSORY LISTING MATTER

Securities & Exchange Board of India's recent circular on listing of corporate bonds on stock exchanges has forced some of the corporates to put on hold their bond issuance.

Arrangers feel the new norms would lead to time consuming paperwork, which would take away the advantage of timing issues based on favourable market conditions.

5.0 SEBI TIGHTENED RULES FOR SUB-BROKERS

The Securities & Exchange Board has recently tightened rules for sub-brokers, the highlights of the same are as follows:

(i) Contract Notes and Payment by Cheques

SEBI has barred sub-brokers from issuing "contract notes" and making payments by cheques directly for share transactions. While barring the usual practice of issuing contract notes to investor, a sub-broker will now have to mandatorily enter into a "tripartite agreement" with a Sebi-registered broker and the client for any sale or purchase of securities.

(ii) Privity of Contract

SEBI has also barred directors of a stock broking firm from acting as its sub-broker. Brokers also need to arrive at an agreement with sub-brokers and its clients to establish privity of contract. The brokers are also required to maintain a document register containing particulars of securities received and delivered in physical form and other records provided by the depository participants for demated securities.

(iii) Own Office, Single-Broker Affiliation

Sub-brokers, who mostly operate from the office of a main broker, will now have to set up their own offices, as the market regulator has directed that sub-brokers need to have adequate infrastructure such as enough office space and manpower, to handle the requirement of clients.

Also, SEBI circular says that a sub-broker should only be affiliated to one broker of one stock exchange.

(iv) Close monitoring by brokers

The proposed higher penalty of Rs. 1 lakh per day for not attending to investor complaints, could force brokers to monitor their sub-brokers more rigorously.

6.0 GOVERNMENT SECURITIES MARKET SET TO WITNESS UPWARD TREND IN VOLUMES

The government securities (G-Secs) market is expected to see a significant jump in trading volume with the Reserve Bank of India allowing participants to sell G-Secs, already contracted for purchase. At present, selling in G-Secs is not permitted without the seller actually holding the security in the portfolio.

The move is not exactly allowing short-selling of G-secs, but will allow intra-day squaring-off of market transactions, which was not permitted earlier. This will improve market liquidity.

7.0 STOCKINVEST SCHEME ABOLISHED

It is observed that the use of Stockinvests as a mode of payment for application for allotment of shares/ debentures in the primary market has declined substantially. Moreover, several measures have been taken by SEBI for bringing down the allotment period under primary issues, which have considerably reduced hardships caused to the investors on account of delay in the allotment process.

In view of these reasons, it has been decided by SEBI that the scheme need not continue any longer. Accordingly, the Stockinvest Scheme may be treated as withdrawn with immediate effect.

(Source: DBOD.NO.FSC.BC. 42/24.47.001/2003-04 dated November 5, 2003)

CAPITAL MARKET

8.0 BANKS TO INVEST ONLY IN LISTED DEBT INSTRUMENTS

The Reserve Bank of India in its revised draft guidelines, has directed that, banks' fresh investments in non-statutory liquidity ratio (SLR) instruments should only be in listed debt securities and they are however allowed to invest up to 20 per cent in unlisted but rated securities.

9.0 COMMODITY DERIVATIVES TRADING - THE NEXT BIG THING

The market for commodity derivatives is expected to provide serious competition to the derivatives market for equities. Four exchanges have been identified as national commodity exchanges. The National Multi Commodity Exchange (NMCE), Ahmedabad and the National Board of Trade (NBOI), Indore are already operational.

A lot of excitement has been generated by the Multi Commodity Exchange (MCX) and the National Commodity and Derivatives Exchange (NCDEX), which will start operations in Mumbai. Already security brokers have been permitted to operate in commodity exchanges.

According to Forwards Market Commission (FMC), the turnover of commodity derivatives is expected to grow 100% by the end of this financial year. Annual Turnover for Exchanges may range from Rs. 40,000 - 70,000 crores.

EXIM-FEMA

1.0 GRANT OF RUPEE LOANS TO NRIs/PIOs EMPLOYEES OF INDIAN BODY CORPORATE

It has been decided to grant general permission to Indian companies, viz. a body corporate registered or incorporated in India, to grant rupee loans to its employees who are Non-Resident Indians or Persons of Indian Origin, subject to certain conditions, as prescribed. Also, it has been provided that the loan shall be granted only for personal purposes including purchase of housing property in India.

(Source: A.P.(DIR Series) Circular No.27 dated October 10, 2003)

2.0 EXPORT OF BOOKS ON CONSIGNMENT BASIS

With a view to liberalising the procedure for export of books, it has been decided that henceforth the Authorised Dealers may approve proposals for export of books on consignment basis for realisation of export proceeds upto 360 days from the date of shipment. The exporters may also be allowed to abandon the books which remain unsold at the expiry of the period of the sale contract. Accordingly, the value of the unsold books may be shown by the exporters as deduction from the export proceeds in the Account Sales.

(Source: A.P.(DIR Series) Circular No.26 dated October 3, 2003)

EXIM-FEMA

3.0 FORWARD CONTRACTS - INVESTMENTS OF NON-RESIDENTS IN INDIAN COMPANIES

It has been decided to permit persons resident outside India having Foreign Direct Investments in India to enter into forward contracts with Authorised Dealers with rupee as one of the currencies to hedge the currency risk on dividend receivable by them on their investments in Indian companies. The forward cover shall be taken only after the rate of dividend has been approved by the Board of Directors of the concerned company.

(Source: A.P.(DIR Series) Circular No.28 dated October 17, 2003)

4.0 DEPB SCHEME EXTENDED UPTO MARCH, 2005

The Director General of Foreign Trade has recently announced that the DEPB scheme will continue up to March 31, 2005.

5.0 NRIs CAN TRADE IN F&O SEGMENT

Non-residing Indians (NRIs) have been permitted to trade in exchange-traded derivatives contracts, while position limits for foreign institutional investors (FIIs) in stock options and futures have been modified and revised upwards.

As per the modification, for stocks in which the market wide position limit is less than or equal to Rs. 250 crore, the FIIs' position limit shall be 20% of the market wide limit and for stocks in which the market wide position limit is greater than Rs. 250 crores, FIIs' position limit shall be Rs. 50 crore.

For NRIs, the position limits will be the same as client-level position limits specified by SEBI. In case of index-based contracts, there is a disclosure requirement for any person or persons acting in concert who together own 15 per cent or more of the open interest of all derivative contracts on a particular underlying index.

For individual stock options and single stock futures contracts, the gross open position across all derivative contracts on a particular underlying stock of a NRI shall not exceed the higher of 1 per cent of free float market capitalisation or 5 per cent of open interest in derivative contracts on a particular underlying stock.

SUPREME COURT JUDGEMENT

METHOD OF VALUATION OF SHARES TO BE ADOPTED FOR SALE OF SHARES.

In a decided case of *Dr. (Mrs.) Renuka Datla Vs. Solvay Pharmaceutical B.V. and Ors.*, it has been held by Supreme Court that where the shares in a public limited company are quoted on the stock exchange and there are dealings in them, the price prevailing on the valuation date would represent the value of the shares. But where the shares in a public limited company are not quoted on the stock exchange or the shares are in a private limited company the proper method of valuation to be adopted would be the profit-earning method. The profit earning method takes into account the profits, which the company has been, making and should be capable of making and the valuation according to this method is based on the average maintainable profits.

TAXATION

1.0 INCOME TAX JUDGEMENTS

1.1 Deduction of TDS is beyond the purview of section 245C

Hon'ble Calcutta High Court in the matter of *Shaw Wallace and Company Limited Vs. Settlement Commission* has decided that "the failure in deducting tax at source does not come within the purview of section 245C (1)". [263 ITR 285].

1.2 Penalty u/s 271(1)(c)

ITAT, Lucknow Bench in the matter of *Smt. Brij Bala Chaudhary Vs. Income Tax Officer* has decided that "when assessee could not explain a part of capital introduced in her business stated to represent realization of assets of her erstwhile proprietary business and surrendered that amount to buy peace, penalty under section 271(1)(c) cannot be levied". [ITD Vol. 87 Part 4 Page 173].

1.3 Clubbing Provisions applies to non residents as well

Hon'ble Andhra Pradesh High Court in the matter of *CIT Vs. B. Narasimha Rao* held that the assessee was a non-resident during the year does not bar application of clubbing provisions, which required at the relevant time inclusion of the minor's income admitted to the benefit of partnership in the hands of parent partner. Non-resident Indians are not intended to be treated as a separate class for this purpose.

1.4 Extension of time limit for filing of TDS Returns on Computer Media

CBDT has extended the last date of filing of TDS Return on Computer Media in respect of financial year 2002-03 to 31st January, 2004. At the same time it has made clear that the last date of filing of TDS Returns other than Returns on Computer Media shall remain to be 30th November, 2003. It may be noted that companies are compulsorily required to file their return on computer media as per section 206 (2) of the Income Tax Act 1961 and therefore for them date is now extended to 31st January 2004.

2.0 SUPREME COURT UPHOLDS TAX EXEMPTION TO MAURITIUS REGISTERED COMPANIES

In a judgement restoring the confidence of international investors, a two member bench of the apex court has upheld the circular of April 13, 2000 of the CBDT exempting Mauritius - based FIIs from paying capital gains tax in India on income from sale of shares.

The CBDT's circular essentially said that a certificate of residence in Mauritius issued by the Mauritius Government was sufficient evidence for accepting the status of residence as well as beneficial ownership for applying DTAC (Double taxation avoidance convention between India and Mauritius).

The circular was issued after the income-tax department in Mumbai issued notices to certain FII's asking them to prove their status of a resident in Mauritius, creating a panic among FIIs and sending the stock markets into a tailspin. The Supreme Court's ruling certainly comes as a confidence building measure for foreign investors, but it will also help plug the misuse of DTAC, particularly by Indian entities registering shell companies in Mauritius.

3.0 CBEC TAKES A NEW STAND ON CHEQUE PAYMENTS

In a change of stance, the Central Board of Excise and Customs (CBEC) has now held that the date of presentation of the cheque in the bank would be reckoned as the date on which central excise duties and service tax dues are deemed to have been paid. This is, however, subject to the realisation of the cheque.

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EMERGING OPPORTUNITIES

The council is also to consider provision of a social security scheme to its members. This should enable grant of adequate financial support in case of a contingency as well as in case of retirement.

A comprehensive marketing and PR exercise to publicise professional value added services by chartered accountants has been initiated through advertisement of the institute in leading business newspapers and magazines. The most crucial issue on which serious efforts are being made is on how proprietary CA firms and other small & medium size firms can equip themselves to better exploit the challenges and opportunities thrown up by a globalising economy. The improved sentiments and better economic growth rate has provided new hopes to members in employment as well as members in practice. The real benefit can be substantially increased by a team spirit and a dynamic leadership in the profession. The guidance and support to harness local and global opportunities including BPO could be provided by the Institute leadership.

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AUDIT

1.0 MNCs FACING FIRST EVER TRANSFER PRICING AUDIT

As many as 600 multinational companies are set to be picked up for transfer pricing (TP) audit, following the finance ministry's decision to bring all cases where the aggregate value of the international transaction exceeds Rs. 5 crore under compulsory scrutiny.

This will be the first ever TP audit after the introduction of the transfer pricing regulation. The MNCs will be audited for their compliance with the arm's length principle in respect of their international transactions for returns filed for assessment year 2002-2003.

Mr. Vinod Jain, Member Central Council of ICAI said that the Transfer Pricing Audits should be outsourced to Chartered Accountants to be picked up from ICAI Panel.

2.0 GUIDELINES ON NETTING OFF OF OLD AND SMALL VALUE ENTRIES - CLEARING DIFFERENCES

It is clarified that netting off at the branches, transfer of entries to Head Office, netting off at the Head Office and writing off/ transfer at the Head Office should be subjected to a 100 percent audit by at least two of the following audits viz. concurrent audit, internal audit and statutory audit.

(Source: DBOD No. BP.BC. 37 /21.04.018/2003-04 dated October 20, 2003)

3.0 STATUTORY AUDITOR TO REPORT ON DIRECTOR'S DISQUALIFICATION

Department of Company Affairs has recently issued Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Rules, 2003 and the said rules prescribed the duty of Statutory Auditors, which is as follows:

"4. Duty of Statutory Auditor to report on disqualification.-

- (a) *It shall be the duty of statutory auditor of the appointing company as well as disqualifying company, as required under section 227(3)(f) to report to the members of the company whether any director is disqualified from being appointed as director under clause (g) of sub-section (1) of section 274 and to furnish a certificate each year as to whether on the basis of his examination of the books and records of the company, any director of the company is disqualified for appointment as a director or not.*
- (b) *It shall be the duty of the statutory auditors of the "disqualifying company" as required in section 227(3)(f) to report to the members of the company whether any director in the company has been disqualified during the year from being re-appointed as director, or being appointed as director in another company under clause (g), of sub-section (1) of section 274."*

(Source: issued by DCA & notified in the Gazette of India on October 21, 2003)

4.0 ACCOUNTING TREATMENT

4.1 Treatment of VRS Expenses, Preliminary Expenses

In the context of Accounting Standard 26 (AS 26) on 'Intangible Assets', it has been clarified from ICAI that lump sum payment towards Voluntary Retirement Scheme and Preliminary Expenses do not meet the definition of 'Asset' as given in AS 26. So, the following treatment will be given to such type of intangible items:

- (a) If expenses on these intangible items are incurred after the date AS 26 became/becomes mandatory (from 1st April, 2003 or 1st April, 2004, as the case may be), these expenses will have to be charged to the revenue account.
- (b) If expenses on these intangible items were incurred before AS 26 became/becomes mandatory (from 1st April, 2003 or 1st April, 2004, as the case may be) and a part of these expenses is still appearing in the Balance Sheet on the date of AS 26 became/becomes mandatory, such expenses will continue to be charged to revenue account over a number of years as originally contemplated since as per the accounting principles relevant for deferred expenditure in India, such expenditure is spread over a period which is normally less than the period contemplated in paragraph 63 of AS 26 (rebuttable presumption of maximum 10 years is provided in paragraph 63 of AS 26). In such cases there is no requirement to adjust the balance of these intangible items against revenue reserves as on the date of AS 26 became/becomes mandatory

4.2 Treatment of Foreign Exchange Rate Differences

Schedule VI to Companies Act, 1956 provides for adjustment of exchange differences (after the fixed asset is put to use) arising out of making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of moneys borrowed by the company from any person, directly or indirectly in any foreign currency specifically for the purpose of acquiring the asset in the carrying amount of the fixed assets. But the revised AS 11 on 'The Effects of Changes in Foreign Exchange Rates' provides for recognition of such differences in the Statement of Profit and Loss.

Since, these two requirements are contradictory to each other, but where a requirement of an Accounting Standard is different from the applicable law, the law prevails. In this direction, **ICAI has clarified that an auditor of a company need not qualify his audit report under section 227(3)(d) of Companies Act, 1956 for non-compliance with Accounting Standard 11 till the time there is an amendment in the law.**

ICAI NEWS

ICAI PLANS TO SET UP OFFICE IN UAE KNOWLEDGE VILLAGE

With the main objective to attract more non-resident Indians to the profession, the Institute of Chartered Accountants of India has decided to open an office at the newly inaugurated "Knowledge Village" in the UAE.

SIMPLIFIED EXIT SCHEME (SES) - CLARIFICATIONS

Department of Company Affairs has recently issued clarifications on Simplified Exit Scheme (SES). The highlights of the clarifications are as follows:

Issue: Whether a company seeking striking off under SES should file adopted balance sheets.

Clarification: Para 9(ii) of the scheme is amply clear. Audited accounts showing no assets and no liabilities are required to be submitted. Nothing else is sought for, and no further clarification is necessary.

Issue: Whether a company can be struck off if an asset is created after 31.3.2003.

Clarification: This is purely a hypothetical situation, which is unlikely going to pass. When a nil audited balance sheet is submitted by an applicant company, it means that the company has no assets. Any company can be restored to the Register should the need arise.

Issue: Whether indemnity bond should be submitted individually by all applicant directors

Clarification: Yes, indemnity bonds should be given by all applicant-directors, and at least two applicant directors should furnish the indemnity bond.

Issue: whether changes in para 1(c) of indemnity bond should be carried out in respect of companies that became defunct after carrying out some business after incorporation.

Clarification: Para 1(c) of the indemnity bond may be read as under :-

"Further the company is not doing/carrying on any business right from the date of its incorporation or for the last ____ (months and years) and the Company is also not intending to do any business or commercial activity as laid down in the main objects of its Memorandum of Association in future".

The above clarification is more by way of information than a requirement. Because a nil audited accounts is being submitted, it may not arise in most cases.

Issue: Whether section 25 company can apply under the scheme.

Clarification: No, under the scheme Section 25 companies cannot apply.

Issue: When the prosecution will be withdrawn. (Para 7 of the scheme)

Clarification: Prosecution will be withdrawn after final notice in the Official Gazette for striking off, only in cases where Prosecution is pending for minor offences such as non-filing of balance sheet and other documents. If the prosecution is with respect to any serious offences, especially those carrying punishment of imprisonment, such prosecutions cannot be withdrawn.

Issue: Should the word "Any Person(s)" referred to in last para of Annexure D of Scheme be substituted with "Any interested person(s)" or "Any authorised person".

Clarification: Yes, the words "any person" referred to in last para of Annexure D be substituted with the words "any interested person in the company".

Issue: Should affidavit be got attested from Notary Public instead of Magistrate.

Clarification: Affidavit should be sworn before a Magistrate or an Executive Magistrate and not a Notary.

It is further clarified that companies under inspection/investigation, or indicated in "vanishing" companies list or "plantation" company or any company involved in any of the stock market scams will not be covered by Simplified Exit Scheme. ROCs/RDs should refer to the Department if they have any doubt about any company.

(Source: GC No: 27/2003 / F.No. 17/78/2001-C.L.V dt. October 7, 2003)

ELECTION TO THE CENTRAL COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

POLLING DATES

• New Delhi / Delhi	Friday & Saturday 19th & 20th December, 2003
• Outside Delhi (Jammu & Kashmir, Himachal Pradesh, Punjab, Haryana & Chandigarh)	Saturday, 20th December, 2003
Time of Polling	8.30 a.m. to 6.30 p.m.

If undelivered, please return to :

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